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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/823,011 | 04/13/2004 | Wayne Elliott Dolczal | 74079-304056 | 4695 |

25764 7590 01/29/2007
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PATENT DOCKETING
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MINNEAPOLIS, MN 55402-3901

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| EXAMINER |
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LAYNO, BENJAMIN

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| ART UNIT | PAPER NUMBER |
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3711

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/29/2007 | PAPER. |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/823,011

Applicant(s)

DOLEZAL, WAYNE ELLIOTT

Examiner

Benjamin H. Layno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's arguments filed 09/12/06 have been fully considered but they are not persuasive. The rejection follows.

Claim Rejections - 35 USC § 102 or 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Markowicz.

5. The Applicant is referred to the description of Markowicz in the first Office action.

The Applicant has argued that Markowicz describes a jackpot (network/national) prize level for a first lottery drawing and a subordinate (individual/state) prize level for a second lottery drawing, while the claimed invention recites "providing a system of prize levels for a first lotto drawing, the prize levels including a jackpot prize level and a subordinate prize level, wherein all member lotteries are eligible for the jackpot prize".

The Examiner takes the position that Markowicz discloses a lottery system of prize levels for a first lotto drawing wherein the prize levels include a jackpot prize level "big winners" and a subordinate prize level "numerous winners" col. 5, lines 5-6.

A first lotto drawing is conducted wherein the user selects several numbers from a larger set of numbers, for example the user selects six numbers ranging between 1 and 56, at an entry price of one dollar. The entries are divided into red, white and blue separate pools, which are separate pari-mutuel playing pools of the national lottery. By matching three or more numbers randomly chosen for the same color as selected, the prize is determined and, if claimed, is awarded. **A minimum prize, "subordinate prize level", for example matching three of the six random numbers will happen relatively frequently, e.g., one in every 27.6 plays. Thus, approximately 1.2 million players will win the minimum prize "subordinate prize", col. 7-25.**

In this same first lotto drawing, it is possible to win by matching 4, 5 or 6 numbers. The system may also vary by whether matching a chosen color with the number is required to win, the color being indicated when a given play is entered. **Greater odds apply and greater cash prizes can be awarded to users that play big selecting the correct color as well as the correct number, "jackpot prize level", see the table in Fig. 5, which shows preferred terms and odds, and estimated cash prize.** The red, white and blue jackpots may not be won on a given day, as is apparent from probability, col. 5, lines 25-51. In the "jackpot prize level", the expected maximum prize on a dollar play is substantial at nearly 2.5 million dollars, However, in the **same**

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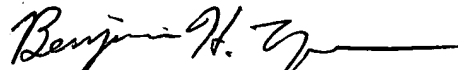
game, the odds of winning are better than 1 in 30 for a three number match

"subordinate prize level", col. 5, lines 64-68.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571)272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl